

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5766 OF 2024.

Aziza Gulam Mohammed

...Petitioner.

Versus

Haki Gulam Co-Op Hsg Society Ltd Throu. The
Chairman /Sec. And Ors

...Respondents.

Mr. Sachin Ramrao Pawar (through VC) for the Petitioner.
Mr. Hamid Mulla AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 17, 2024.

P. C. :

1. By this Petition, the challenge is to the order dated 13th October, 2023 passed by the Divisional Joint Registrar upholding the order of Assistant Registrar Co-operative Societies, dismissing the Revision Application filed by the present Petitioner and thereby allowing the Application for membership.

2. Learned Counsel appearing for the Petitioner would submit that the father of the Petitioner was monthly tenant in respect of the Room No. 5 on the second floor of the building and thereafter the Petitioner and his brothers were the legal heirs. He submits that during the lifetime of the Petitioner's father one Abdul Rehman Shaikh and his family were permitted to occupy the premises and the Petitioner's brother through fraudulent document claimed to be the

sole legal heir of the Petitioner's father and transferred the Tenancy of the suit property in respect of which suit has been filed and is pending in the City Civil Court. He submits that thereafter there was transfer of Tenancy in favour of the Respondent No.2 in the year 2018 and suit for declaration of cancellation of transfer of Tenancy was filed in the year 2018 before the Civil Court.

3. He submits that subsequently the property went for re-development and the Respondent No. 2 on the basis of permanent alternate accommodation agreement entered into with the developer submitted an Application for membership and as the same was not allowed, moved the Assistant Registrar to allow the Application as against which the Revision filed before the Divisional Joint Registrar came to be rejected. He submits that considering the title dispute which was involved the membership could not have been granted to Respondent No. 2.

4. I have considered the submissions and perused the record.

5. Admittedly the Respondent No. 2 has entered into a permanent alternate accommodation with the Developer in respect of the Tenement in the redeveloped building. On the basis of the registered agreement and the possession of the property the Respondent No. 2 applied to the Society for membership. As the same was not granted an Application was moved under Section 22 of the

Tenancy Act before the Assistant Registrar in which the present Petitioner had intervened. The provisions of Section 22 of the Tenancy Act provides that where a person is refused admission as a member of the Society the decision is required to be communicated within a period of 15 days and if not so the person is deemed to have been admitted as a member and if question arises whether the person is deemed to be a member the same shall be decided by the Registrar. As the society failed to take any decision the Application was filed before the Respondent No. 2 and based on the agreement and the possession of the Respondent No. 2 the Registrar has allowed the Application which cannot be faulted.

6. As the submissions which are canvassed are in the context of title dispute to the subject property the Authorities under the MCS Act, even otherwise could not have dealt with the said issues. The issues as regards the title is required to be determined by the Civil Court and the Petitioner has already instituted proceedings before the Civil Court. As the submissions border on the title dispute and no infirmity is demonstrated from the impugned order, there is no reason to interfere under Article 227 of Constitution of India.

7. Petition is devoid of merits and stands dismissed.

[Sharmila U. Deshmukh, J.]